

Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,709,898 to Biggs et al. ("Biggs") in view of *The Wholefood Catalog*, Ballantine Books (1988), p. 12 ("the Catalog") for the reasons recited on pages 3-4 of the Office Action.

Biggs discloses a wafer that includes flour, sucrose, invert sugar, fat, salt, and lecithin (*See, e.g.*, Example 1). The wafer may be coated with a fat or fat based coating (*See, e.g.*, column 2, lines 5-8). Biggs does not disclose or suggest a wafer that contains cereal grits and water. The Catalog discloses that small amounts of cooked grits may be added to batters for muffins, griddle cakes, or quick breads for extra moisture and flavor.

The present invention, by contrast, recites a sugar wafer batter that has had some or all of the wheat flour replaced by cereal grits, or some or all of the sucrose replaced by a reducing sugar. This composition provides sugar wafers that are sufficiently flexible for more than 40 seconds, preferably more than 50 seconds, and most preferably up to 70 seconds or more, after baking, to permit further processing of the wafer (*See, e.g.*, Specification, page 5, lines 12-15). Standard sugar wafers, such as that disclosed by Biggs, permit only a limited time for processing, usually up to about 40 seconds (*See, e.g.*, Specification, page 1, lines 28-33).

Biggs teaches to heat at least part of the wafer in order to provide sufficient plastic properties to the wafer to permit it to be shaped (*See, e.g.* column 1, lines 35-36). Biggs does not disclose or suggest replacing the flour with cereal grits or replacing the sucrose with reducing sugar to accomplish the goal of permitting the wafer to remain flexible for further processing after baking. The Catalog fails to remedy this deficiency, as it merely teaches that "a small amount" cooked grits may be added to the batter for "muffins, griddle cakes, or quick breads, *for extra moisture and flavor*" (emphasis added). The Catalog does not teach that the ratio of cereal grits to wheat flour may be from 10:90 to 80:20. Indeed, the phrase "a small amount" *teaches away* from the upper end of this ratio. The Catalog also does not disclose or suggest that grits may be added to sugar wafers, as presently claimed. Rather, the Catalog teaches that it may be added to muffins, griddle cakes, or quick breads.

Finally, the Catalog does not teach replacing the wheat flour in a sugar wafer with cereal grits in order to increase flexibility of the wafer after baking. Instead, the Catalog teaches adding cereal grits for the limited purpose of adding "*extra moisture and flavor*". Thus, one of ordinary skill in the art would not have been motivated to combine the Catalog with Biggs, nor was there any reasonable expectation of successfully combining the references to obtain the present invention. Moreover, Biggs and the Catalog both fail to

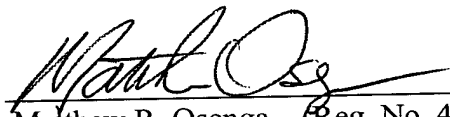
disclose or suggest replacing all or a part of the sucrose in a sugar wafer with a reducing sugar. Thus, no *prima facie* case of obviousness has been stated. For these reasons, Applicants respectfully request that the rejection of claims 1-20 be reconsidered and withdrawn.

Applicants now believe all claims to be in condition for allowance. Should the Examiner not agree with this position, a telephone or personal interview is requested to resolve any remaining issues and expedite allowance of this application.

No fee is believed to be due for this response. Should any fees be required, however, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Respectfully submitted,

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Date


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Enclosures

APPENDIX A: MARKED UP VERSION OF AMENDED CLAIMS

1. (Amended) A sugar wafer batter comprising:

(i) a grain component comprising wheat flour and cereal grits in an amount sufficient to be baked into a crisp wafer; a sugar additive comprising sucrose, a reducing sugar, or a mixture thereof in an amount sufficient to provide a sweet taste to the wafer; and water in an amount sufficient to form a batter; or

(ii) a grain component comprising wheat flour in an amount sufficient to be baked into a crisp wafer; a sugar additive comprising sucrose and a reducing sugar in an amount sufficient to provide a sweet taste to the wafer; and water in an amount sufficient to form a batter;

wherein a sugar wafer obtained by baking batter (i) or (ii) is sufficiently flexible for more than 40 seconds after baking to enable further processing of the wafer.

9. (Amended) A sugar wafer comprising fat, wheat flour, cereal grits, sucrose, and water, wherein the combination of fat, wheat flour, cereal grits, sucrose, and water account for at least 95 percent by weight of the sugar wafer; the amount of water in the sugar wafer is from about 0.5% to 6% by weight based on the weight of the sugar wafer; the sucrose is present in an amount of from 50 to 100 parts by weight per 100 parts by weight of the wheat flour and cereal grits; and the ratio of wheat flour to cereal grits to is from 10:90 to 80:20; and whereby the sugar wafer is sufficiently flexible for more than 40 seconds after baking to enable further processing of the wafer.

13. (Amended) A sugar wafer comprising fat, wheat flour, sucrose, a reducing sugar, and water, wherein the combination of fat, wheat flour, sucrose, a reducing sugar, and water account for at least 95 percent by weight of the sugar wafer; the amount of water in the sugar wafer is from 0.5% to 6% by weight based on the weight of the sugar wafer; the sucrose and reducing sugar are present in an amount of from 50 to 100 parts by weight per 100 parts by weight of the wheat flour; and the ratio of sucrose to reducing sugar is from 85:15 to 20:80; and whereby the sugar wafer is sufficiently flexible for more than 40 seconds after baking to enable further processing of the wafer.

APPENDIX B: PENDING CLAIMS

1. (Amended) A sugar wafer batter comprising:

(i) a grain component comprising wheat flour and cereal grits in an amount sufficient to be baked into a crisp wafer; a sugar additive comprising sucrose, a reducing sugar, or a mixture thereof in an amount sufficient to provide a sweet taste to the wafer; and water in an amount sufficient to form a batter; or

(ii) a grain component comprising wheat flour in an amount sufficient to be baked into a crisp wafer; a sugar additive comprising sucrose and a reducing sugar in an amount sufficient to provide a sweet taste to the wafer; and water in an amount sufficient to form a batter;

wherein a sugar wafer obtained by baking batter (i) or (ii) is sufficiently flexible for more than 40 seconds after baking to enable further processing of the wafer.

2. The sugar wafer batter of claim 1, wherein the grain component contains cereal grits and the ratio of wheat flour to cereal grits is from 10:90 to 80:20.

3. The sugar wafer batter of claim 2, wherein cereal grits are corn grits, maize grits, wheat grits, oat grits, rice grits, or a combination thereof.

4. The sugar wafer batter of claim 1, wherein the water is present in an amount of from 100 to 160 parts by weight per 100 parts by weight of the grain component.

5. The sugar wafer batter of claim 1, wherein the sugar additive is present in an amount of from 50 to 100 parts by weight per 100 parts by weight of the grain component.

6. The sugar wafer batter of claim 1, wherein the sugar additive contains a reducing sugar and the reducing sugar is fructose, glucose, glucose syrup, dextrose, corn syrup, invert sugar, a fruit juice containing a reducing sugars, honey, or a mixture thereof.

7. The sugar wafer batter of claim 1, wherein the sugar additive contains a reducing sugar and the ratio of sucrose to reducing sugar is from 85:15 to 20:80.

8. A process for preparing a sugar wafer comprising baking the sugar wafer batter of claim 1 for 0.5 to 2 minutes at a temperature of from 140°C to 180°C to form a sugar wafer.

9. (Amended) A sugar wafer comprising fat, wheat flour, cereal grits, sucrose, and water, wherein the combination of fat, wheat flour, cereal grits, sucrose, and water account for at least 95 percent by weight of the sugar wafer; the amount of water in the sugar wafer is from about 0.5% to 6% by weight based on the weight of the sugar wafer; the sucrose is present in an amount of from 50 to 100 parts by weight per 100 parts by weight of the wheat flour and cereal grits; and the ratio of wheat flour to cereal grits to is from 10:90 to 80:20; and whereby the sugar wafer is sufficiently flexible for more than 40 seconds after baking to enable further processing of the wafer.

10. The sugar wafer according to claim 9, further comprising one or more of milk, cream, milk powder, whole egg, egg powder, soya flour, salt, lecithin, vanilla crystals, or a raising agent.

11. The sugar wafer of claim 10, wherein 15 percent to 80 percent of the sucrose is replaced with a reducing sugar.

12. The sugar wafer according to claim 11, further comprising one or more of milk, cream, milk powder, whole egg, egg powder, soya flour, salt, lecithin, vanilla crystals, or a raising agent.

13. (Amended) A sugar wafer comprising fat, wheat flour, sucrose, a reducing sugar, and water, wherein the combination of fat, wheat flour, sucrose, a reducing sugar, and water account for at least 95 percent by weight of the sugar wafer; the amount of water in the sugar wafer is from about 0.5% to 6% by weight based on the weight of the sugar wafer; the sucrose and reducing sugar are present in an amount of from 50 to 100 parts by weight per 100 parts by weight of the wheat flour; and the ratio of sucrose to reducing sugar is from 85:15 to 20:80; and whereby the sugar wafer is sufficiently flexible for more than 40 seconds after baking to enable further processing of the wafer.

14. The sugar wafer according to claim 13, further comprising one or more of milk, cream, milk powder, whole egg, egg powder, soya flour, salt, lecithin, vanilla crystals, or a raising agent.

15. A confectionery product comprising the sugar wafer of claim 9 and a second confectionery material having a water activity below 0.5, wherein the second confectionery material is in direct contact with the sugar wafer.

16. A confectionery product comprising the sugar wafer of claim 11 and a second confectionery material having a water activity below 0.5, wherein the second confectionery material is in direct contact with the sugar wafer.

17. A confectionery product comprising the sugar wafer of claim 13 and a second confectionery material having a water activity below 0.5, wherein the second confectionery material is in direct contact with the sugar wafer.

18. A confectionery product comprising the sugar wafer of claim 9, a second confectionery material, and a moisture barrier between the sugar wafer and the second confectionery material.

19. A confectionery product comprising the sugar wafer of claim 11, a second confectionery material, and a moisture barrier between the sugar wafer and the second confectionery material.

20. A confectionery product comprising the sugar wafer of claim 13, a second confectionery material, and a moisture barrier between the sugar wafer and the second confectionery material.